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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/009,294	01/20/1998	RANDELL L. MILLS	911319	7247
<div>20736 7590 06/07/2007 MANELLI DENISON & SELTER 2000 M STREET NW SUITE 700 WASHINGTON, DC 20036-3307</div> <div>EXAMINER KALAFUT, STEPHEN J</div> <div>ART UNIT PAPER NUMBER 1745</div> <div>MAIL DATE DELIVERY MODE 06/07/2007 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/009,294	Applicant(s) MILLS, RANDELL L.	
	Examiner Stephen J. Kalafut	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-300 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-300 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>(2 dates)</u> . | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06 September 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1-300, for reasons of record, are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. See paper no. 27, paragraph no. 3.

Claims 1-300, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 27, paragraph no. 4.

Applicant's arguments filed 06 September 2006 have been fully considered but they are not persuasive.

Applicant argues that many of his references have passed peer review, and thus should be considered by the "Committee". The failure of some of these references to go through peer

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review is merely one reason why these references are not found persuasive. Every attachment of applicant's has also been found unpersuasive for other reasons, and none found unpersuasive for the lack of peer review alone.

Applicant argues that the "Committee" provides no support for the conclusion that some attachments contain data not accounted for by applicant's theory. This is not persuasive because paper no. 20050103, starting on page 3, explains the discrepancy between the differences in energy levels predicted by applicant's theory and those observed. While applicant may point to some data that does match his theory, this misses the point raised in paper no. 20050103. This paper does not say that no data fits in with applicant's theory, only that some does not, and points out, in the last 3 lines of page 3, where the discrepancy lies.

Applicant argues that the "Committee" provides no support for the conclusion that some of applicant's attachments speculate hydrino formation as an explanation for data not necessarily caused thereby. This is not persuasive because the reasons for this conclusion are set forth in the Appendix to paper no. 20060226, starting on page 9.

Applicant argues that the Heisenberg Uncertainty Principle as applied by Krieg has no basis in fact, as shown by Lieb, but also faults the approach by Lieb as "physically baseless". See also the Appendix to paper no. 20060226, starting on page 18.

Applicant argues that he need not "understand the precise theoretical basis for why his invention works" (emphasis applicant's), and that he has disclosed his invention sufficiently to enable one of ordinary skill in the art to practice it. Applicant also alleged that the "Committee" has twisted his word into a "straw man" argument that "an inventor is free to put forth any theory he wishes". The "Committee" does not say that applicant believes that an inventor may "put

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forth any theory he wishes". The Examiner merely states that the lack of a requirement to precisely understand the theory behind one's invention does not permit one to allege a theory that is not in accordance with accepted scientific principles.

Applicant argues that the Balmer line broadening shown by Cvetanovic is independent of the orientation of the observer. Thus, the Abstract of Cvetanovic is incorrect. However, a viewing of Figure 4c shows a different overall curve shape. At the wavelength of 656.0 nm, for example, the level of I (a.u.) appears to be close to half way between zero and 500 a.u., thus falling between 200 and 250 a.u., while in figures 4a and 4b, the level of I at 656.0 nm appears to be much closer to zero. The curves in figures 4a and 4b appear to be more smoothly concave going up to the peak from the surrounding zero background, while in figure 4c, there appears to be a plateau between the peak and the surrounding zero background.

Applicant faults EarthTech, whose "Mills experiment showed no detectable sign of excess heat" for being a "competitor", but also points to other labs which have "validated Applicant's experiments". This shows a contradictory standard by applicant. Results agreeing with his are valid and independent, but results that differ arise from competition, and cannot be considered unbiased.

Applicant points out that there is no requirement that each catalyst provide all possible lower-energy states, and that in some papers, the lower-energy states correspond to the predicted values of "q", which are multiples of 13.6 eV. This is not persuasive because, as stated in paper no. 20050103, applicant has observed values for "q" that are outside what his formula predicts.

Regarding the attachments cited in the IDS of 06 September 2006:

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Attachments 115 and 116 would fall into category (5) as set forth in paper no. 20050103, as speculating hydrino formation as an explanation for data not necessarily caused thereby.

Attachment 115, presently being "submitted", also falls into category (1), as not (yet) having been peer reviewed. Attachments 74, 80, 94, 102 (also the sole reference listed in the IDS of 30 March 2007), 106 and 113 are already of record, and have been referred to in previous Office Actions, such as paper no. 20050103 and paper no. 20060226.

This is a Request for Continued Examination of applicant's earlier Application No. 09/009,294. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700